

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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In the Matter of )  
 ) CC Docket No. 96-45  
 Federal-State Joint Board on ) (Report to Congress)  
 Universal Service )

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc., by its attorneys, hereby submits its reply comments in response to the *Public Notice* in the above-referenced matter.<sup>1/</sup> These reply comments focus on two issues raised in the comments submitted by other parties. First, despite pleas from some states and rural carriers, the comments provide no basis for modifying the current division of expenses between the interstate and intrastate jurisdictions. Second, the Commission should not consider the area code relief issues raised by the Pennsylvania Public Utility Commission (the "Pennsylvania PUC") in this proceeding.

**I. The Commission Should Not Rebalance the Current Division of Expenses Between the Interstate and Intrastate Jurisdictions.**

Several commenters suggest that the Commission should reduce the burden of the universal service requirements on rural carriers and rural states by modifying the current division of expenses between the interstate and intrastate jurisdictions. These commenters argue that the current level of apportionment to the interstate jurisdiction - 25 percent - is

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<sup>1/</sup> See Common Carrier Bureau Seeks Comments for Report to Congress on Universal Service Under the Telecommunications Act of 1996, *Public Notice*, CC Docket No. 96-45, DA 98-2 (rel. January 5, 1998). A separate order granted an extension of time for filing reply comments to February 6, 1998, Federal-State Joint Board on Universal Service, Order, CC Docket No. 96-45, DA 98-63 (rel. January 14, 1998).

insufficient in light of the burdens of universal service on rural carriers and states. There is, however, no evidence that this is the case and significant evidence to the contrary. Moreover, any increase in the percentage of expenses assigned to the interstate jurisdiction would result in increased subsidies from urban states to rural states.

First, there is no basis for claims that the current 25/75 split is unreasonable. Historically, interstate traffic represents less than 25 percent of all traffic and that pattern continues today. Significantly, service providers that are not governed by separations, such as competitive LECs and wireless providers, show similar results. For instance, in Vanguard's case less than 15 percent of its traffic meets the Commission's current definition of interstate traffic for CMRS providers.<sup>2/</sup>

Equally important, there is no need to modify the jurisdictional assignments of costs. Although the rural carriers and states complain that they will be unable to comply with the universal service provisions of the Communications Act without raising prices, the fact is that those provisions do not require any changes in the overall charges to consumers at the state level. Taken together, the carriers in each state already are recovering the full measure of the costs assigned to the intrastate jurisdiction. The conversion of implicit subsidies to explicit subsidies, as required by Section 254, does not require any changes in the average

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<sup>2/</sup> As noted above, this calculation is based on current Commission rules, which require Vanguard to treat traffic that has been rendered jurisdictionally interstate by the 1993 Budget Act amendments to Sections 2(b) and 332 as if that traffic is jurisdictionally intrastate. Vanguard has shown in its comments in this proceeding that the current Commission rules are erroneous. *See* Comments of Vanguard at 2-6. However, when Vanguard classifies its traffic according to the rules applied to carriers that are not governed by Section 332, then the figure in the text is accurate.

costs paid by telephone consumers.<sup>3/</sup> Consequently, there is no reason to assume that the states are incapable of making the necessary adjustments in subsidy flows without adverse effects on consumers.

Moreover, if the Commission were to reassign costs to the interstate jurisdiction, the result would be to create an increased subsidy, over and above those already in place, for rural carriers and rural states. If the share of costs assigned to the interstate jurisdiction were increased, high cost carriers naturally would disproportionately contribute to the increase in interstate costs. The increased costs would be recovered evenly across the country, so that customers of rural carriers would pay less than the new costs they would impose on the network while customers of carriers in high cost areas would pay more than the new costs they would add to the interstate jurisdiction. Thus, reassigning costs to the interstate jurisdiction not only is unnecessary to ensure that rural carriers and states are not disadvantaged, but also would result in new, unnecessary subsidies.

## **II. The Pennsylvania PUC's Comments on Area Code Relief Matters Should Not Be Considered in this Proceeding.**

The Pennsylvania PUC filed comments that principally focused on area code relief issues in Pennsylvania.<sup>4/</sup> As shown below, the PUC's comments are not relevant to the

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<sup>3/</sup> Indeed, under the Commission's current rules, certain providers that have not previously been required to contribute to universal service, including CMRS providers and private carriers, are likely to be required to contribute to state universal service funds. Thus, the total burden of universal service on landline carriers actually will be reduced.

<sup>4/</sup> The Pennsylvania PUC also joined in comments filed on behalf of a group of Pennsylvania commenters that addressed more traditional universal service issues.

issues before the Commission in this proceeding and also are based on several inaccurate premises. Thus, they should not be considered in this proceeding.

First, the Pennsylvania PUC has asked the Commission to consider issues that are beyond the scope of this proceeding. This proceeding addresses a series of specific questions raised by Congress, each of which relates generally to eligibility for universal service subsidies or the funding of such subsidies. The PUC's comments address numbering issues. Although the PUC argues that numbering has an impact on universal service, that impact is attenuated at best, and no more direct than, for instance, antidiscrimination requirements. More significantly, the numbering issues raised by the PUC are the subject of a separate, pending proceeding before the Commission.<sup>5/</sup> That proceeding is the proper place to address those issues.

In addition, the Pennsylvania PUC's comments are based on erroneous premises. For instance, the comments assert that wireless providers have opposed the assignment of an NPA for a "transparent" overlay and have insisted that area code relief be accomplished in the 215, 610 and 717 area codes via area code splits.<sup>6/</sup> These statements are incorrect. Although Vanguard does not believe that the transparent overlay code concept will provide any meaningful relief from area code exhaust, it never has asked the Commission or any other body to deny assignment of area codes for that purpose, or even suggested that

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<sup>5/</sup> Indeed, the Pennsylvania PUC has submitted its comments as part of an *ex parte* filing in the pending Pennsylvania area code proceeding. See Letter of James J. McNulty, Secretary, Pennsylvania PUC, to Magalie Roman Salas, Secretary, FCC, Jan. 28, 1998, NSD Fiel No. L-97-24.

<sup>6/</sup> Comments of Pennsylvania PUC at 4.

assignments should be denied. Similarly, Vanguard never has insisted on any particular form of area code relief, but only has asked the Pennsylvania PUC to adopt some form of area code relief for the 717 area code.

Moreover, the Pennsylvania PUC misapprehends the nature of the wireless provider petition for declaratory ruling that is now before the Commission. The petition was *not* filed to deny any provider, landline or wireless, access to numbering resources, but was filed because the Pennsylvania PUC's orders had prevented wireless providers from obtaining those resources. As Vanguard and other wireless providers have explained in more detail in their comments in that proceeding, the PUC's orders have had the effect of creating a series of options that, as a practical matter, do not provide sufficient numbering resources to meet existing wireless needs. For instance, even if the transparent overlay concept were approved by the Commission, wireless providers could not use numbers from the overlay without violating dialing parity and E-911 requirements and without substantial customer confusion.<sup>7/</sup> Similarly, permanent number pooling simply is not available today, in Pennsylvania or elsewhere, and cannot be made available to wireless providers until they are able to implement number portability.<sup>8/</sup>

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<sup>7/</sup> These issues arise because wireless numbers are programmed into the customer's handset, which is not the case in the landline network. Thus, the "transparent" overlay would not be transparent to wireless customers or to wireless networks outside the customer's home system.

<sup>8/</sup> The Commission's rules call for CMRS providers to implement number portability by June of 1999, but implementation by that date is unlikely for the reasons described in the comments in response to the Cellular Telecommunications Industry Association's petition for extension of the compliance period for wireless portability. In Vanguard's case, its switch vendor already has indicated that it will not be able to provide

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(continued...)

While the PUC argues that wireless providers can use 1,000 number blocks, in almost all cases it will be impracticable to do so. Using 1,000 number blocks requires Type 1 interconnection, which costs more than and offers less functionality than the Type 2 interconnection now used by most cellular and PCS providers. Using 1,000 number blocks also would require cooperation from unaffiliated providers for roaming purposes and would require that the number blocks be available at the CMRS provider's rate center. Indeed, given the relatively high usage rate of numbers by CMRS providers, assignments in 1,000 blocks are unlikely to have a meaningful effect on number exhaust.

Because the options proposed by the Pennsylvania PUC are not, in practice, available to wireless providers, those providers have been forced to depend on the allocation of numbers through the numbering rationing plan in Pennsylvania. The PUC has modified that plan, however, to reduce the number of NXX codes assigned each month, with the result that several wireless providers have run out of numbers or are about to run out of numbers in several rate centers in the 215, 610 and 717 area codes. Thus, to the extent there is any connection between numbering and universal service, it is the PUC's actions, not the actions of wireless providers, that have made it difficult for service to be provided to Pennsylvania customers.

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Vanguard's case, its switch vendor already has indicated that it will not be able to provide the initial, trial version of portability software until the beginning of 1999, and further delays are possible.

**III. Conclusion**

For all these reasons, and the reasons set forth in Vanguard's initial comments, the Commission should report to Congress in accordance with Vanguard's recommendations.

Respectfully submitted,

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